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In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 232

WILLIAM OSCAR MATTOX, JR.,
Petitioner,

v.

DALE CARSON, as Sheriff of Duval County, Florida,
Respondent.

CECIL FREDERICK LOWE,
Petitioner,

v.

DALE CARSON, as Sheriff of Duval County, Florida,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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INDEX

	Page
QUESTIONS PRESENTED	1
ADDITIONAL STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR DENYING WRIT	4
I. Assuming *Arguendo* That The Questioning of A Witness By A Grand Jury Is A "Custodial Police Interrogation" Such That The Warnings Under *Miranda v. Arizona*, 384 U.S. 436 (1966) Must Be Given, The United States Constitution Does Not Bar State Prosecution Of Such Witness Although At His Trial He Would Be Entitled To The Exclusion Of His Grand Jury Testimony And The Tainted Fruits Thereof	4
II. The Warnings Under *Miranda v. Arizona*, 384 U.S. 436 (1966), Were Not Required To Be Given Petitioners Because A Grand Jury Appearance Is Not A "Custodial Police Interrogation"	9
III. The Decision Of The Court of Appeals Which, In Effect, Reinstated The State Criminal Charges Pending Against Petitioners, Was Correct In That It Upheld The Rule of Comity Between Federal and State Courts	16
CONCLUSION	21

CITATION OF AUTHORITIES

Page

CASES

Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, 38 Law Week 4471 (opinion rendered June 8, 1970) 19

Baker v. Grice, 169 U.S. 284 (1898) 17

Brown v. United States, 359 U.S. 41 (1959) 14

Byrne v. Karalexis, ____ U.S. ____, 90 S.Ct. 469 (Stay Order Granted December 15, 1969) 18

Cameron v. Johnson, 390 U.S. 611 (1968) 18

Counselman v. Hitchcock, 142 U.S. 547 (1892) 7, 8

Donovan v. Dallas, 377 U.S. 408 (1964) 18

Douglas v. City of Jeanette, 319 U.S. 157 (1942) 18

In Re Report of Grand Jury, 152 Fla. 154, 11 So.2d 316 (1943) 15

Levine v. United States, 362 U.S. 610 (1960) 14

Miranda v. Arizona, 384 U.S. 436 (1966) 1, 2, 3, 6, 7, 9, 10

People v. LaBello, 301 N.Y.S. 2d 544 (N.Y. 1969) 20

Piccirillo v. New York, No. 1249, 38 Law Week 3347 (cert. granted February 27, 1970) 20

Pulford v. United States, 155 F.2d 944 (6th Cir. 1946) 12

Regan v. New York, 349 U.S. 58 (1955) 8, 9

United States v. Blue, 384 U.S. 251 (1966) 5, 6

CITATION OF AUTHORITIES—Continued

Page

United States v. DiMichele, 375 F.2d 959 (3rd Cir. 1967), cert. den. 389 U.S. 838 11

United States v. Scully, 225 F.2d 113 (2nd Cir. 1955) .. 11, 14

United States v. Winter, 348 F.2d 204 (2nd Cir. 1965) .. 12, 13

United States v. Wolfson, 294 F. Supp. 267 (D. Del. 1968) 6

STATUTES

28 U.S.C. Section 2283 ..... 2, 18, 19

Section 905.10, Florida Statutes (1965) 15

Section 932.29, Florida Statutes (1965) 3, 16

MISCELLANEOUS

38 Am. Jur. 2d Grand Juries Section 1 14

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OCTOBER TERM, 1969

No. 1664

WILLIAM OSCAR MATTOX, JR.,
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v.

DALE CARSON, as Sheriff of Duval County, Florida,
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CECIL FREDERICK LOWE,
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DALE CARSON, as Sheriff of Duval County, Florida,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

1. Assuming *arguendo* that a witness' appearance pursuant to subpoena before a grand jury is a "custodial police interrogation" within the meaning of *Miranda v. Arizona*, 384 U.S. 436 (1966), does the failure to advise the witness of the so-called "Miranda Warnings" bar the state from prosecuting such witness or, instead, does the failure to so advise

the witness result in the exclusion of the witness' grand jury testimony and the fruits thereof at trial?

2. Were the appearances by Petitioners before the Duval County Grand Jury a "custodial police interrogation" within the meaning of *Miranda v. Arizona*, 384 U.S. 436 (1966)?

3. Did the United States District Court violate 28 U.S.C. Section 2283 by granting habeas corpus which resulted in permanently enjoining the State of Florida from proceeding with the pending criminal cases against Petitioners?

ADDITIONAL STATUTE INVOLVED

In addition to the statutes involved set forth in the Petition for Writ of Certiorari, another statute involved is 28 U.S.C. Section 2283.

STATEMENT OF THE CASE

On July 14, 1966, Petitioners Mattox and Lowe appeared separately, pursuant to subpoena, before the Grand Jury of Duval County, Florida. At the time of their appearances, the Grand Jury was conducting an investigation concerning possible larcenies of monies and other items from the City of Jacksonville, Florida by elected city officials. Petitioners were members of the Jacksonville City Council and were suspects in the larcenies under investigation. (M.R. 8, 20, 22; L.R. 8, 19, 21).*

* In this brief, Respondent will use the same designations which Petitioners used in referring to the record before the Court. Accordingly, reference to the record in the Mattox case, filed with the Court of Appeals, and designated as Volume I, Document 1 of the record prepared for purposes of the Petition herein, will be designated as "M.R.", while the record in the Lowe case, filed with the Court of Appeals, and designated as Volume II, Document 2 of the record prepared for purposes of the Petition, will be designated as "L.R.". Reference to the Petition for Habeas Corpus filed in the United States District Court on behalf of Mattox and contained in Volume III, Document 3 of the record prepared for purposes of the Petition, will be designated as "M.P.", while the Petition for Habeas Corpus filed on behalf of Lowe contained in Volume III, Document 4 of the record prepared for purposes of the Petition, will be designated as "L.P."

Prior to being sworn and interrogated before the Grand Jury, Petitioners were formally and separately advised by the State Attorney of the subject matter of the investigation and of their rights under Section 932.29, Florida Statutes (1965), the Florida immunity statute. (M.R. 38-40; L.R. 37-39). A copy of the immunity statute is reproduced in the Petition at pages 3 and 4. They were advised that, inasmuch as the investigation concerned possible grand larcenies, one of the crimes covered by the immunity statute, and since they were subpoenaed to appear befoer the Grand Jury, the statute would immunize them from prosecution if they testified without waiving their rights under the statute. (M.R. 38-40; L.R. 37-39). After the explanation of the immunity statute, Petitioners were handed written waiver of immunity forms. After reading them each stated he understood his rights and then signed the waiver form, after which Petitioners were sworn and testified before the Grand Jury. (M.R. 35, 39, 40; L.R. 34, 39).** Subsequently, Petitioners were indicted for larceny and the State Attorney, based on the indictments, filed informations against Petitioners in the Criminal Court of Record of Duval County, Florida.

Petitioners moved the trial court to quash the informations alleging that the waivers of immunity under the immunity statute were void since they were not fully advised of the constitutional warnings set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966). (M.R. 11, 12; L.R. 11, 12) On November 18, 1966, the Criminal Court denied the motions. (M.R. 26; L.R. 25).

** The conversation between the Petitioners and the State Attorney concerning their rights under the immunity statute occurred in the Grand Jury room immediately before they, respectively, were sworn and gave testimony. As to Petitioner Mattox, such conversation, along with the written waiver of immunity, is set forth in M.R. 35-41. As to Petitioner Lowe, the similar transaction with the State Attorney, along with the written waiver, is set forth in L.R. 34-40.

Petitioners unsuccessfully urged the same theory by way of suggestions for prohibition in the District Court of Appeal of Florida, First District, and the Florida Supreme Court. (See Petitioners' Appendices D, E, F and G). No petition was filed in the Supreme Court of the United States to review the decision of the Florida Supreme Court. Instead, Petitioners surrendered themselves to the Respondent sheriff and sought a writ of habeas corpus in the United States District Court for the Middle District of Florida. On January 10, 1969, Federal District Court Judge Charles R. Scott entered his Order Granting Petition for Habeas Corpus thereby permanently enjoining the state criminal proceedings then pending against Petitioners. (Petitioners' Appendix C) The United States Court of Appeals for the Fifth Circuit reversed Judge Scott's order in a unanimous decision. (Petitioners' Appendix A). On May 6, 1970, the Court of Appeals denied the Petition for Rehearing. (Petitioners' Appendix B).

REASONS FOR DENYING WRIT

I.

ASSUMING *ARGUENDO* THAT THE QUESTIONING OF A WITNESS BY A GRAND JURY IS A "CUSTODIAL POLICE INTERROGATION" SUCH THAT THE WARNINGS UNDER *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966) MUST BE GIVEN, THE UNITED STATES CONSTITUTION DOES NOT BAR STATE PROSECUTION OF SUCH WITNESS ALTHOUGH AT HIS TRIAL HE WOULD BE ENTITLED TO THE EXCLUSION OF HIS GRAND JURY TESTIMONY AND THE TAINTED FRUITS THEREOF.

In reversing the District Court's order granting habeas

corpus, the Court of Appeals, in its unanimous decision, stated:

> "If appellees were subjected to a custodial interrogation as contemplated by *Miranda,* then the failure to warn them of the constitutional rights due under *Miranda* should be urged in the state court trials as a bar to the admission of any evidence, or fruits thereof, gained during the interrogations. *Miranda* does not authorize a complete dismissal of the criminal charges by reinstating the immunity rights of appellees."

In so reasoning, the Court of Appeals followed this Court's decision in *United States v. Blue,* 384 U.S. 251 (1966). In *Blue,* the defendant was indicted in the United States District Court for the Southern District of California on several tax evasion counts. The District Court granted Blue's motion to dismiss and *barred further prosecution* on the grounds that, because of certain "jeopardy assessments" and the prior Tax Court proceeding, Blue "has been compelled and will be compelled to come forward on the same matters as are concerned in this criminal case, to testify against himself". The Government contended that the statements made by Blue were exculpatory and did not constitute incriminating evidence. However, the Court stated that it was immaterial, for purposes of the question under consideration, whether the statements were exculpatory or inculpatory. Stated the Court at page 514:

> "Even if we assume that the Government did acquire incriminating evidence in violation of the Fifth Amendment, Blue would at most be entitled to suppress the evidence and its fruits if they were sought to be used against him at trial. While the general common-law practice is to admit evidence despite its

> illegal origins, this Court in a number of areas has recognized or developed exclusionary rules where evidence has been gained in the violation of the accused's rights under the Constitution . . . . *Our numerous precedents ordering the exclusion of such illegally obtained evidence assume implicitly that the remedy does not extend to barring the prosecution altogether. So drastic a step might advance marginally some of the ends served by exclusionary rules, but it would also increase to an intolerable degree interference with the public interest in having the guilty brought to book.*
>
> "We remand this case to the District Court to proceed on the merits, leaving Blue free to pursue his Fifth Amendment claim through motions to suppress and objections to evidence."
>
> (emphasis added)

Blue, supra, was a unanimous decision rendered in 1966, the year the Court decided *Miranda v. Arizona, supra.*

The United States District Court for Delaware cited the *Blue* case in *United States v. Wolfson,* 294 F. Supp. 267 (D. Del. 1968), in holding that, even though he gave incriminating testimony, it was improper to bar prosecution of a grand jury witness merely because he was not advised of certain constitutional warnings. As the District Court properly pointed out:

> "At most he would be entitled to suppress the evidence and its fruits if they were sought to be used at trial; it would not bar the prosecution altogether."
>
> (294 F. Supp. 275)

There is no federal constitutional right to immunity from prosecution. If a grand jury witness waives his right to immunity under the state statute he, of course, may still decline

to answer incriminating questions under the Fifth Amendment. If he incriminates himself and has not been properly warned of his constitutional rights, he is fully protected by the exclusionary rule of evidence approved by the Court in *Miranda, supra.* Stated the Court:

> "More specifically, *we deal with the admissibility of statements* obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself."
>
> (384 U.S. 439) (emphasis added)

Petitioners rely heavily upon this Court's decision in *Counselman v. Hitchcock,* 142 U.S. 547 (1892), a reliance which is misplaced. Respondent readily concedes that the immunity statute is "involved" with the Fifth Amendment right against self-incrimination by virtue of *Counselman, supra.* There would be no need for an immunity statute in the absence of Fifth Amendment rights. But neither that involvement nor the *Counselman* case necessitate or require that the waiver of statutory immunity be tested by federal constitutional standards. Appellant submits that such misinterpretation of *Counselman* was the primary reason which led to the erroneous decision in the District Court. The District Court interpreted the phrase from *Counselman* that "the immunity statute supplants the Fifth Amendment and it must be coextensive with it" to mean that the same federal constitutional standards which are applied to test the validity of a waiver of Fifth Amendment rights must also be applied to test the validity of an attempted waiver of the statutory right to immunity. (See Petitioners' Appendix C-9). A close examination of *Counselman* shows such conclusion to be in-

correct. *Counselman* stood for two things: (1) It held that in order to refuse to testify on the grounds of self-incrimination, the forum in which a person attempts to exercise such right need not be a criminal proceeding against him. This is now hornbook constitutional law; (2) In order to compel a person to testify at the risk of contempt penalties, an immunity statute which disallows the use of such testimony in a subsequent criminal prosecution without also prohibiting the use of the leads or fruits thereof is invalid because such statute purports to supplant the Fifth Amendment privilege but is not *coextensive* with such privilege; a person, therefore, may not be held in contempt for refusing to testify where he is not afforded as extensive protection by the immunity statute as by the Fifth Amendment. Respondent readily agrees that in order to compel a witness to testify, *Counselman* requires that the immunity statute must afford complete protection. This is an entirely different proposition from the District Court's holding that a waiver of statutory immunity is void absent *Miranda* warnings.

The case of *Regan v. New York*, 349 U.S. 58 (1955), has also been urged upon this Court by Petitioners as a key authority that, absent the *Miranda* warnings, a purported waiver of a statutory right to immunity from prosecution is void. The *Regan* case is not authority for that proposition. The appeal was from a conviction for contempt of court where the defendant refused to testify before the grand jury after he had expressly waived in writing his right to immunity from prosecution *and* his right against self-incrimination under the Fifth Amendment. The defendant claimed that his waiver of immunity was invalid. He was uncertain as to his status and refused to answer on the grounds that his testimony would tend to incriminate him. The Court affirmed the contempt conviction without determining whether the waiver

of immunity was valid. The Court reasoned that if it were an *invalid* waiver of immunity, he must testify because he could not incriminate himself since he could not be prosecuted; and if the waiver of immunity from prosecution were *valid*, he could not refuse to answer on Fifth Amendment grounds of self-incrimination because he had *also* expressly, and in writing, waived his right against self-incrimination. (See Regan's written waiver reproduced in the Court's opinion at 349 U.S. 60). Unlike Regan, neither Petitioner Mattox nor Petitioner Lowe waived his Fifth Amendment right against self-incrimination. In fact, the Petitioners have alleged that they were never *advised* of their right against self-incrimination. If, in fact, a grand jury appearance *is* a "custodial police interrogation" under the *Miranda* decision, Petitioners are fully insulated from their incriminating statements by the exclusionary rule of *Miranda*.

II.

THE WARNINGS UNDER *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966), WERE NOT REQUIRED TO BE GIVEN PETITIONERS BECAUSE A GRAND JURY APPEARANCE IS NOT A "CUSTODIAL POLICE INTERROGATION".

Petitioners' basic premise that their grand jury appearances were "custodial police interrogations" within the meaning of *Miranda, supra,* is erroneous. The very language of *Miranda v. Arizona, supra* shows that the "warnings" are not applicable to grand jury proceedings. Stated the Court:

> "More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to *custodial police interrogation* . . . ."
>
> (384 U.S. 439) (emphasis added)

* * *

"By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

(384 U.S. 444)

The Court further attempted to put "custodial police interrogation" in proper perspective by stating:

"As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater *than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery.*"

(384 U.S. 461) (emphasis added)

In the State Court prohibition proceedings in the instant case, the District Court of Appeal of Florida, First District, (the opinion of which was adopted by the Florida Supreme Court in 210 So.2d 197), pointed out that in *Miranda* and its companion cases (Vignera, Westover and Stewart), they were all interrogated at the station house by the police. The First District opinion then stated:

"In the instant case, the interrogation complained of did not occur while Mr. Lowe was in the custody of the police nor in the private office of a prosecuting official. On the contrary, the interrogation occurred before a Grand Jury composed of the relator's fellow citizens as prescribed by statute. A court reporter was present and the Grand Jury was operating under the direct supervision of the Circuit Court.

* * *

"From what we gather, Miranda is applicable to inter-

> rogations in the 'isolated setting of the police station' and not those occuring 'in courts or other official investigations' where there are impartial observers to guard against intimidation and trickery being employed to compel the witness to give evidence against himself."
>
> (202 So.2d 234, 235)

In *United States v. DiMichele*, 375 F.2d 959 (3rd Cir. 1967), cert. den. 389 U.S. 838, the Court of Appeals held that a witness subpoenaed before a grand jury need not be advised of his constitutional rights. The Court stated:

> "He substantially concedes, as is the fact, that under the existent law a grand jury witness, which is all that appellant was, is not entitled to a warning of right to counsel and to remain silent."
>
> (375 F.2d 960)

The appellant in *United States v. Scully*, 225 F.2d 113 (2nd Cir. 1955) contended that he was not "advised of his constitutional right against self-incrimination" when he appeared, pursuant to subpoena, before the federal grand jury when the "authorities had already marked the defendant for prosecution, intended to indict him and were engaged in bringing his indictment about." The Court held that there was no requirement that a grand jury witness be advised of his constitutional rights, regardless of whether he was a "mere witness" or a potential defendant. The Court stated:

> "These considerations do not apply to the inquisitorial proceedings of a Grand Jury. Such a body is not charged with the duty of deciding innocence or guilt and, for this reason, its proceedings have never been conducted with the assiduous regard for the reserva-

> tion of procedural safeguards which normally attends the ultimate trial of the issues. Thus, in such proceedings, there is no right to counsel, no right of confrontation, no right to cross-examine or to introduce evidence in rebuttal and ordinarily no requirement that the evidence introduced be only such as would be admissible upon a trial. See United States v. Costello, 2d Cir., 1955, 221 F.2d 668."
>
> (225 F.2d 116)

In *Pulford v. United States*, 155 F.2d 944 (6th Cir. 1946), the defendant appealed a conviction contending it was error to introduce certain evidence which he alleged he was compelled to give to the grand jury. The Court found that, although the oral explanation of defendant's constitutional rights was somewhat confusing, the written waiver which defendant signed was clear. In any event, the Court held that it was unnecessary to advise the witness of his right against self-incrimination before the grand jury. In this regard, the Court stated:

> "The written waiver of immunity offered to the appellant to sign was undoubtedly tendered to him in an excess of caution. There was no obligation on the part of the investigators to warn him of his constitutional right to remain silent prior to his examination before the Grand Jury."
>
> (155 F.2d 947)

The Court was not actually dealing with an immunity statute in *Pulford*. The word "immunity" was used in that case to refer to the right against self-incrimination.

In *United States v. Winter*, 348 F.2d 204 (2nd Cir. 1965), Winter complained that his right against self-incrimination

and his right to counsel were violated when he was subpoenaed to appear before the grand jury when he was already a "prospective" or "de facto" defendant and was not advised of his rights to counsel. To such contentions, the Court stated:

> "Short shrift may be made of appellant's claim that the self-incrimination clause of the Fifth Amendment prohibits the Government from ever summoning before a grand jury one who has become a target of inquiry and is a 'potential' defendant. Whatever may be the rule in the State of New York, the Fifth Amendment does not proscribe the practice here inveighed against. Repeatedly this Court has so ruled, declining to equate the position of a 'potential' defendant called before a grand jury with that of one already on trial.
>
> * * *
>
> "To suggest that once an individual is named by witnesses before a grand jury under circumstances which may lead to his indictment he thereby automatically gains immunity from subpoena would denude that ancient body of a substantial right of inquiry.
>
> * * *
>
> "No more successful is appellant's Sixth Amendment claim, which arises out of the omission of the Assistant United States Attorney to advise him of his 'right' to consult with counsel before entering the grand jury room."
>
> (348 F.2d 207, 208)

The *Winter* case can, of course, be distinguished on its facts from the case *sub judice* inasmuch as Winter was convicted of perjury arising out of his grand jury testimony while Peti-

tioners were charged with the substantive offense of larceny. However, Respondent submits that such distinction should not eliminate *Winter* as persuasive authority, particularly since the same Circuit which decided *Winter* had previously reached the same conclusion in a non-perjury case. See *United States* v. *Scully*, *supra*.

The difference between police custodial interrogations and grand jury proceedings is firmly grounded in our country's system of criminal justice. As stated by the Court in *Levine v. United States*, 362 U.S. 610, 617 (1960):

> "The grand jury is an arm of the court and its in camera proceedings constitute 'a judicial inquiry'. Hale v. Henkel, 201 U.S. 43, 66, 50 L.Ed. 652, 662, 26 S. Ct. 270. The Constitution itself makes the grand jury a part of the judicial process. It must initiate prosecution for the most important federal crimes. It does so under general instructions from the court to which it is attached and to which, from time to time, it reports its findings."

See also *Brown v. United States*, 359 U.S. 41 (1959).

It would be a blow to one of the basic institutions of our society to relegate the grand jury to the status of a "custodial police interrogation". The Petitioners paint a rather grim picture of the grand jury, its motives and purposes. They attempt to create the impression that it is a sinister body serving no other purpose than to intimidate and harass witnesses into confessions. On the contrary, the grand jury is an adjunct or appendage of the court by which it is impaneled; it has no existence apart from that court. 38 Am. Jur. 2d *Grand Juries* § 1. The grand jury is one of the noblest institutions of a free society. As stated by the Honorable

Marion W. Gooding, Judge of the Circuit Court of the Fourth Judicial Circuit of Florida in his Charge to the Grand Jury of Duval County, Florida on May 27, 1966 (the grand jury which indicted Petitioners):

> "There is no greater deterrent to evil and corruption than the inquiring mind and searching eye of a Grand Jury; and it is universally recognized that in time of peace, no citizen assumes a more responsible duty of citizenship than a Grand Juror. No other group of citizens exercises functions more vital to the administration of law and order.
>
> * * *
>
> "It is one of the bulwarks of our liberties, a protection of the innocent and the people's weapon for preventing abusive practices of public officials."

The admonition to the grand jury contained in the latter portion of the statutory oath of grand jurors is significant:

> "You shall present no man for envy, hatred or malice; neither shall you leave any man unpresented for love, fear, favor, affection, reward, or hope thereof, but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God."
>
> (§905.10, Florida Statutes, 1965)

The holder of a public office holds his position as a trust which may be withdrawn at any time. The grand jury is peculiarly adapted to inquire into conduct of public officials. As stated by Justice Glenn Terrell in *In Re Report of Grand Jury*, 152 Fla. 154, 11 So.2d 316, 319 (1943):

> "In a democracy, it is not possible for the people individually to know when such trusts are being abused

> so one of the agencies provided to represent and report when abuses are committed is the grand jury."

The Duval County Grand Jury was carrying out one of its most important responsibilities when Petitioners, both elected public officials, were subpoenaed to appear before that body. No sinister motive can or should be attributed to such action.

III.

THE DECISION OF THE COURT OF APPEALS WHICH, IN EFFECT, REINSTATED THE STATE CRIMINAL CHARGES PENDING AGAINST PETITIONERS, WAS CORRECT IN THAT IT UPHELD THE RULE OF COMITY BETWEEN FEDERAL AND STATE COURTS

In its order, subsequently reversed by the Court of Appeals, the District Court concluded:

> "Under the immunity statute, Section 932.29, Florida Statutes, F.S.A., petitioners are released from custody and free from any further criminal prosecution on the charges of grand larceny."
>
> (See Petitioners' Appendix C-10)

In reversing, the Court of Appeals stated:

> "It is thus clear that a federal habeas corpus court must leave such federal questions as may possibly arise under the Fifth Amendment aspect of the Florida Immunity statute to the state trial courts under the exclusionary rule. This includes questions as to the validity of the waivers."
>
> (See Petitioners' Appendix A-4, 5)

In so holding the Court of Appeals recognized the principle of comity between federal and state courts which principle, for so long, has been scrupulously protected by this Court. That principle was expressed in *Baker v. Grice*, 169 U.S. 284, 288 (1898), a habeas corpus case, in which the Court said:

> "From these cases it clearly appears, as the settled and proper procedure, that while Circuit Courts of the United States have jurisdiction, under the circumstances set forth in the foregoing statement, to issue the writ of *habeas corpus*, yet those courts ought not to exercise that jurisdiction by the discharge of a prisoner unless in cases of peculiar urgency, and that instead of discharging they will leave the prisoner to be dealt with by the courts of the State; that after a final determination of the case by the state court, the Federal courts will even then generally leave the petitioner to his remedy by writ of error from this court. The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the Federal courts by which a person under an indictment in a state court and subject to its laws may, by the decision of a single judge of the Federal court, upon a writ of *habeas corpus*, be taken out of the custody of the officers of the State and finally discharged therefrom, and thus a trial by the state courts of an indictment found under the laws of a State be finally prevented. Cases have occurred of so exceptional a nature that this course has been pursued. Such are the cases *In re Loney*, 134 U.S. 372, and *In re Neagle*, 135 U.S. 1, but the reasons for the interference of the Federal court in each of those cases were extraordinary, and presented what this court regarded as such exceptional facts as to justify the inteference of the Federal tribunal. Unless this case be of such an exceptional nature, we ought not

> to encourage the interference of the Federal court below with the regular course of justice in the state court."

More recently, the Court stated in *Cameron v. Johnson*, 390 U.S. 611, 617 (1968):

> "Federal interference with a State's good-faith administration of its criminal laws 'is peculiarly inconsistent with our federal framework' and a showing of 'special circumstances' beyond the injury incidental to every proceeding brought lawfully and in good faith is requisite to a finding of irreparable injury sufficient to justify the extraordinary remedy of an injunction."

See also concurring Opinion of Mr. Justice Black in *Byrne v. Karalexis*, ... U.S. ....., 90 S. Ct. 1469 (Stay Order Granted December 15, 1969); *Donovan v. Dallas*, 377 U.S. 408 (1964); *Douglas v. City of Jeanette*, 319 U.S. 157 (1942). The District Court's order granting habeas corpus was as effective in terminating the pending state proceedings as the injunctive order involved in *Cameron, supra*.

Congress; also, very early in our nation's history, attempted to prevent conflicts and frictions between federal and state court systems when in 1793, it enacted the forerunner of 28 U.S.C. Section 2283, which presently provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Respondent submits that whether the District Court called its order an order granting habeas corpus or an injunction

prohibiting the state court proceedings is of little moment. The effect is obviously the same. Section 2283 should apply regardless of the legal nomenclature used to describe the order. Recently, in *Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers*, 38 Law Week 4471 (opinion rendered June 8, 1970), this Court gave full meaning to Section 2283 and stated:

> "Moreover since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court."
>
> (38 Law Week 4473)

In *Atlantic Coast Line Railroad, supra*, the Court recognized that in order for a federal district court to validly enjoin pending state proceedings, the injunction must fall within one of the following exceptions set forth in Section 2283: it must be "expressly authorized by Act of Congress", "necessary in aid of [the District Court's] jurisdiction" or "to protect or effectuate [that court's] judgments." 38 Law Week 4473. Respondent submits that the actions of the District Court patently did not fall within any of such exceptions of Section 2283.

As stated by the Court in *Atlantic Coast Line Railroad, supra*:

> "Again, lower federal courts possess no power whatever to sit in direct review of state court decisions. If the union was adversely affected by the state court's

> decision, it was free to seek vindication of its federal right in the Florida appellate courts and ultimately, if necessary, in this Court."
>
> * * *
>
> "Unlike the Federal District Court, this Court does have potential appellate jurisdiction over federal questions raised in state court proceedings, and that broader jurisdiction allows this Court correspondingly broader authority to issue injunctions 'necessary in aid of its jurisdiction.'"
>
> (38 Law Week 4475)

Petitioner concluded his Petition by citing *People v. La Bello*, 301 N.Y.S. 2d 544 (N.Y. 1969) in which certiorari was granted by this Court *in Piccirillo v. New York*, No. 1249, 38 Law Week 3347 (cert. granted February 27, 1970). Without conceding the factual similarity between *Piccirillo* and the case *sub judice*, it is significant that certiorari was granted in *Piccirillo after* the defendants were tried and convicted in the New York trial court and *after* they had appealed their convictions through the highest appellate court of that state.

After trial and appeal in the Florida courts, review in this Court by way of certiorari will be available to Petitioners. At this point, it would be premature for the Court to exercise its discretion in granting the Petition for Writ of Certiorari.

CONCLUSION

In view of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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